UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CHARLES SHORT,

Plaintiff,

-against-

THE LIONS MODEL MANAGEMENT, LLC, individually and d/b/a "THE LIONS," RON BURKLE, individually, ALI KAVOUSSI, individually, LOUIE CHABAN, individually, CHRISTIANA TRAN, individually, and JULIA KISLA, individually,

Defendants.
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Index No.: 1:17-cv-2949

COMPLAINT

Plaintiff Demands
a Trial by Jury

Plaintiff, by and through his attorneys, Phillips & Associates, Attorneys at Law, PLLC, hereby complains of the Defendants, upon information and belief, as follows:

INTRODUCTION

1. Plaintiff complains pursuant to 42 U.S.C. § 1981 and to remedy violations of the Executive Law of the State of New York and the Administrative Code of the City of New York, based upon the supplemental jurisdiction of this Court pursuant to *Gibb*, 383 U.S. 715 (1966) and 28 U.S.C. §1367, seeking damages to redress the injuries Plaintiff has suffered as a result of being harassed and discriminated against by the Defendants on the basis of his race, together with creating a hostile work environment, retaliation, and wrongful termination.

JURISDICTION AND VENUE

2. The Court has jurisdiction pursuant to 42 U.S.C. §1981; 28 U.S.C. §1331, §1343 and supplemental jurisdiction thereto.
3. This action involves a Question of Federal Law.

4. Venue is proper in this district based upon the fact that a substantial part of the events or omissions giving rise to the claims occurred within the Southern District of the State of New York. 28 U.S.C. §1391(b).

PARTIES

5. Plaintiff is an African-American male resident of the State of New York, County of New York.
6. At all times material, LIONS MODEL MANAGEMENT, LLC, individually and d/b/a "THE LIONS" (hereinafter also referred to as "THE LIONS") was and is a foreign limited liability company duly incorporated under the laws of the State of Delaware.
7. At all times material, Defendant THE LIONS was and is a foreign limited liability company authorized to conduct business in the State of New York.
8. At all times material, Defendant THE LIONS was and is a foreign limited liability company which does conduct business in the State of New York.
9. At all times material, Defendant RON BURKLE (hereinafter also referred to as "BURKLE") was and is a resident of the State of California.
10. At all times material, Defendant BURKLE was and is an "Owner" of Defendant THE LIONS.
11. At all times material, Defendant ALI KAVOUSSI (hereinafter also referred to as "KAVOUSSI") was and is a resident of the State of New York.
12. At all times material, Defendant KAVOUSSI was and is a "Director" of Defendant THE LIONS.
13. At all times material, Defendant KAVOUSSI was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.

14. At all times material, Defendant LOUIE CHABAN (hereinafter also referred to as "CHABAN") was and is a resident of the State of New York.

15. At all times material, Defendant CHABAN was and is a "Director" of Defendant THE LIONS.

16. At all times material, Defendant CHABAN was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.

17. At all times material, Defendant CHRISTIANA TRAN (hereinafter also referred to as "TRAN") was and is a resident of the State of New York.

18. At all times material, Defendant TRAN was and is a "Director" of Defendant THE LIONS.

19. At all times material, Defendant TRAN was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.

20. At all times material, Defendant JULIA KISLA (hereinafter also referred to as "KISLA") was and is a resident of the State of New York.

21. At all times material, Defendant KISLA was and is the Chief Executive Officer ("CEO") of Defendant THE LIONS.

22. At all times material, Defendant KISLA was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.

23. Defendant THE LIONS, Defendant KAVOUSSI, Defendant CHABAN, Defendant TRAN, and Defendant KISLA are hereinafter also collectively referred to as "Defendants."

24. At all times material, Plaintiff was an employee of Defendants.

MATERIAL FACTS

25. On or about September 23, 2013, Plaintiff began working for Defendants as a "Models Agent/Talent Manager" at Defendants' 552 Broadway, 6th Floor, New York, NY 10012.

Plaintiff's primary duties included recruiting models and sourcing, negotiating and booking modeling opportunities.

26. Throughout his employment with Defendants, Plaintiff was praised for his performance.

27. For example, Plaintiff earned and negotiated lucrative contracts for Defendants' clients with companies such as J.Crew, Express, Bebe, and Morrocanoil.

28. In or around January 2014, Defendant KAVOUSSI, Defendant CHABAN, Defendant TRAN and Defendant KISLA took over the leadership of Defendant THE LIONS.

29. Soon thereafter, in an effort to foster a "creative workplace," Defendants encouraged and/or condoned race-based harassment in the workplace.

30. Specifically, Defendant KAVOUSSI, Defendant CHABAN, Defendant TRAN and Defendant KISLA allowed their employees to select and play songs on the office iPod to be played throughout the office, containing the word **"nigger"** or **"nigga"** and referring to offensive stereotypes about African-Americans throughout the day.

31. Throughout his employment with Defendants, Plaintiff was forced to endure a barrage of racially offensive lyrics.[1]

32. For example, in or around 2014, one of the songs often played by Defendants' employees, **"Lookin' ass"** by Nicki Minaj, stated, **"Look at all y'all smokin' ass niggas/ After every pull, niggas start chokin' ass niggas/ Nigga- Nigga," "I'm rapin' you nigga",** and Drake's "Over" lyrics, stating, **"Got to go thriller Mike Jackson on these n'ggas."** Plaintiff was offended by racially-charged lyrics and he protested, "Can we please play something else?" Defendants simply ignored Plaintiff's complaints.

33. Defendants would also play a song called "Ville Mentality" by J. Cole, stating, **"Cause niggas hit my phone when they want some shit/ Bitches hit my phone when they want**

[1] Most of the songs cited in this complaint have "clean" versions with racial slurs censored or changed.

some dick" and **"Similar to my niggas duckin' cases/ Can't take the possible time that it faces."**

34. Defendants also routinely played "Gold Digger" by Kanye West, stating, **"Now I ain't saying she a gold digger (when I'm in need)/ But she ain't messin' with no broke niggas."**

35. As yet another example, Plaintiff was also subjected to the lyrics of Lil' Wayne's **"Bitches Love Me (Good Kush & Alcohol)"** stating, **"Yeah, I can give a fuck 'bout no nigga/ Long as these bitches love me," "Uh, real nigga fuck these haters/ These hoes got pussies like craters,"** and **"Fuck the world,"** stating, **"Tryin' to get in where I fit in, no room for a nigga/ But soon for a nigga it be on, motherfucker."**

36. In addition, Defendants also condoned lyrics that were discriminatory based on gender and national origin, such as Lil Wayne's song "Every Girl", stating **"And Wayne say pussy pussy pussy/ And weed and alcohol seem to satisfy us all,"** and **"My butter pecan Puerto Rican/ She screamin' out 'papi' every time a nigga deep in."**

37. Defendant KAVOUSSI, Defendant CHEBAN, Defendant TRAN, and Defendant KISLA, whose offices were located on the same floor as the employees' work area, knew or should have known that their employees' music choices created a hostile work environment toward African-Americans.

38. At first, Plaintiff tried to ignore the constant use of the words **"nigga," "bitch,"** and **"hoe"** in the workplace, and focus on his work.

39. However, in or around the beginning of February 2014, Defendants played the song "Constantly Hating" by Young Thug, stating, **"My niggas mugging, these niggas YSL loaded/ I heard my Nolia niggas not friendly, like no way,"** and **"Pussy niggas hold their nuts, masturbatin' on you/ Meanwhile the fuckin' federal baitin' on you/ Nigga tell me**

what you do/ Would you stand up or would you turn to a pussy nigga?" Plaintiff was offended by the lyrics, which encouraged race and sex-based violence.

40. In or around February 2014, Plaintiff complained to Defendant KAVOUSSI, Defendant CHABAN, Defendant TRAN, and Defendant KISLA about the loud and racially-offensive lyrics that played in the office on a daily basis. In an email, Plaintiff specifically requested that Defendants stop playing music containing racial slurs.

41. Later that same day, Defendants' "Director of Human Resources," Tina Roman, contacted Plaintiff regarding his complaint. Ms. Roman then told Plaintiff, "[Defendant THE LIONS] is sorry for the unfortunate choice of music. This is not intentional. We will rectify the situation and it won't happen again." At the time, Plaintiff believed that Defendants would remedy the harassment and prevent future harassment in the workplace.

42. After Plaintiff's complaint, Defendants temporarily stopped playing in the office songs containing the word **"nigger"** or **"nigga."** At the time, Plaintiff believed that Defendants had remedied the situation.

43. However, soon thereafter, Defendant KAVOUSSI began to harass and retaliate against Plaintiff for his complaints.

44. On one occasion, in front of Plaintiff's clients, Defendant KAVOUSSI said "I really want to listen to some rap music but I know that [*Plaintiff*] would get offended."

45. On another occasion, in front of Plaintiff's co-workers, Defendant KAVOUSSI mocked Plaintiff by stating, "You hate rap [music], right, Charles?"

46. As a further example of Defendants' harassment and retaliation, Defendant KAVOUSSI asked Plaintiff and his co-workers, "Do you guys want to see this video I got from (model) Irina Shayk?" When Plaintiff stood up to see the video, Defendant KAVOUSSI laughed and told Plaintiff, "Nevermind, Charles, I don't think you'll like it because she's using the **'n-**

word.'" Nevertheless, Defendant KAVOUSSI continued to play the video for Plaintiff's co-workers in Plaintiff's presence.

47. Defendants really had no intention of addressing Plaintiff's complaints and/or ending the discrimination.

48. In or around April 2014, after seeing Defendant KAVOUSSI's (a Director) response to Plaintiff's complaints, Defendants' employees became empowered to again select songs containing the word **"nigger"** or **"nigga"** in the office. Plaintiff again complained, "I thought this was going to stop." Defendant KAVOUSSI merely replied, "We put parental controls this time." Nevertheless, the "parental controls," if even really implemented, did not stop the racially abusive content of the music. Plaintiff continued to be subjected to racial slurs on a daily basis.

49. Defendants failed to remedy the harassment and/or prevent future harassment.

50. Plaintiff was subjected to over eight (8) hours of racially offensive and derogatory music on a daily basis, and for the rest of his employment at Defendant THE LIONS.

51. On or about March 20, 2017, at 9:30 a.m., Plaintiff sat down at his desk and again heard the lyrics of Nicki Minaj's song, **"Lookin Ass,"** stating, **"Look at y'all bitch ass niggas/ Stop lyin' on your dick ass niggas/ Nigga, nigga [...]"** and **"Pussy, you tried, pussy ass nigga you lie/ Pussy ass nigga, you high."** Plaintiff could no longer endure the constant race-based harassment and walked over to the iPod, stopped the song, and removed the iPod from its speakers. Plaintiff then complained, "I find this music to be very disrespectful as an African-American man. This is crude, vulgar, and totally inappropriate for the workplace." Plaintiff's co-worker, Paige Eskenazi, replied, "I agree, this is not appropriate music for the workplace."

52. Shortly thereafter, Plaintiff again complained to Defendant KAVOUSSI, Defendant

CHABAN, Defendant TRAN, and Defendant KISLA about the ongoing race-based workplace harassment. In an email, Plaintiff wrote,

> **"When I started working at The Lions I explained that I did not want to work in a [un]professional (sic) work place environment in which nigger was blasted from the iPod all day, every day. I was assured that it would stop and now I find myself having to write my last email on this iisue (sic). I will not work for a company or in an environment where my employer or fellow employess (sic) think that it is okay to play nigger on the iPod. We would never listed (sic) to anti Jewish, Latino white, or gay music or lyrics. I need to know that this is going to stop or I can no longer work at The Lions. I will not work at a company that I feel tottaly disrespected by (sic). We have black employees and models that work here and that we represent...It is completely unacceptable to me that this continues to happen repeatedly. So I need to be reassured that this is going to stop or I will not be able to work here."**

53. A few hours later, Defendant KAVOUSSI, Defendant CHABAN, and Defendant KISLA arrived to the office.

54. Defendant KISLA then sent Plaintiff an email stating, "Charles, we would love to talk to you about this email and your concerns." Plaintiff agreed to meet with Defendants for an in-person meeting regarding his complaints.

55. Later that same day, Plaintiff attended a meeting with Defendant KAVOUSSI, Defendant CHABAN, and Defendant KISLA in the stairwell located outside of the office. Defendant KISLA stated, "We got your email, and it was very harsh. [Defendant THE LIONS] is a very welcoming and inclusive place. We are not racists." Plaintiff replied, "I think you're being racially insensitive. My email was worded strongly because I feel that this is a serious situation that is not being properly addressed. I was assured that this would not happen again." Defendant KISLA merely stated, "Nobody told you this would not happen again. It was a mistake. We always turn on the parental controls." Plaintiff again complained, "This has been going on daily since 2014. If the parental controls were really in place, it wouldn't

have happened. The staff should know better than to play music of this nature in the workplace to begin with. [Defendant KISLA], you adopted a bi-racial child, would you want him to work in a work place environment in which he felt humiliated, denigrated, mentally anguished and disrespected?" Defendant KISLA did not reply.

56. Defendant CHABAN then stated, **"You're just overreacting and projecting. The word 'nigger' doesn't mean what it used to. This generation uses that word everywhere. You hear it on the street, on the subway, at photo shoots, and most people using it are black. Most of the songs playing in the office are rapped by black rappers. Even some of the models we represent use the 'n-word.'"** Plaintiff replied, "You seem more agitated that I put my complaint in an email, rather than the problem itself. I can't believe that someone who has never been African-American a day in his life is giving me a lecture on the merits of the word 'nigger' in a workplace environment. I cannot control what people do on the street, but this is a place of business. I told you repeatedly that I don't like the word 'nigger' being blasted on the office iPod in a place of business."

57. Plaintiff continued, "You don't hear the word 'nigger' when you enter banks, stores, or restaurants. You don't hear racial slurs on their sound systems." Defendant CHABAN replied, **"We don't work in a bank, we work in a creative field. Just get over it."**

58. As a further example of Defendants' racial insensitivity, Defendant CHABAN compared Plaintiff's complaints about race discrimination to complaints about Nazi imagery. Defendant CHABAN stated, "When I worked at DNA Models, I wore a bracelet with a swastika on it to the office, and one agent said he thought it was offensive in the workplace. I wasn't wearing the bracelet as a racist symbol. It was a symbol that the Nazis took from Native Americans."

59. Plaintiff replied, "But I am constantly hearing racist language on the iPod, and I can see that

we're just going around in circles about my complaints." Plaintiff then returned to his desk.

60. The next day, Plaintiff worked a regular shift. Defendants did not play songs containing the word **"nigger"** or **"nigga"** during Plaintiff's shift.

61. Later that same day, after Plaintiff returned home from his shift, he received a telephone call from Defendant KISLA and Defendant CHABAN. Defendant KISLA stated, **"We've been thinking, and based on your reaction to the music, we're going to have to let you go."** Plaintiff was surprised and replied, "So you don't want me to come in tomorrow to pick up my things?" Defendant KISLA replied, "No, we're just going to box up your things." Defendant CHABAN then stated, "We just think it's best if you don't come in anymore."

62. Defendants terminated Plaintiff because he continuously opposed their unlawful conduct.

63. Defendants terminated Plaintiff **one (1) day** after his complaint of workplace harassment and discrimination.

64. Defendants failed to remedy the harassment and/or prevent further harassment.

65. Defendants' actions were intended to, and did, create a hostile work environment that no reasonable person would tolerate.

66. Defendants would not have harassed Plaintiff but for his race.

67. Defendants would not have harassed or retaliated against Plaintiff but for his complaints about Defendants' unlawful employment practices.

68. As a result of Defendants' actions, Plaintiff felt, and continues to feel, extremely humiliated, degraded, violated, embarrassed, and emotionally distressed.

69. As a result of Defendants' discriminatory and intolerable treatment of Plaintiff, he suffered, and continues to suffer, severe emotional distress and physical ailments.

70. As a result of the acts and conduct complained of herein, Plaintiff has suffered, and will continue to suffer, the loss of income, the loss of a salary, bonuses, benefits, and other

compensation which such employment entails, and Plaintiff has also suffered future pecuniary losses and emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

71. As Defendants' conduct has been malicious, willful, outrageous, and conducted will full knowledge of the law, Plaintiff demands punitive damages against all of the Defendants, jointly and severally.

72. **At all times material, Defendant BURKLE, as an owner of Defendant THE LIONS, is individually and personally liable to Plaintiff for discrimination under New York State and New York City Law as an owner of the Corporate Defendant.**

AS A FIRST CAUSE OF ACTION
UNDER FEDERAL LAW
U.S.C. Section § 1981

70. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

71. 42 U.S.C. Section 1981 states in relevant part as follows:

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification,

and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

72. Plaintiff, a member of the African-American race, was discriminated against because of his race as provided under 42 U.S.C. Section § 1981, as well as being retaliated against for complaining about the harassment and has suffered damages as set forth herein.

AS A SECOND CAUSE OF ACTION
UNDER STATE LAW
DISCRIMINATION

73. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

74. Executive Law §296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's race. . . to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

75. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of his race, together with creating a hostile work environment, retaliation, and wrongful termination.

76. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Executive Law Section 296.

AS A THIRD CAUSE OF ACTION
UNDER STATE LAW
RETALIATION

77. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

78. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory

practice:

> "For any person engaged in any activity to which this section applies to retaliate or discriminate against any person before he has opposed any practices forbidden under this article."

79. Defendants engaged in an unlawful discriminatory practice by retaliating, and otherwise discriminating against Plaintiff because of his opposition to Defendants' unlawful actions.

AS A FOURTH CAUSE OF ACTION
UNDER STATE LAW
AIDING AND ABETTING

80. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

81. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice:

> "For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

82. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law §296(6) by aiding, abetting, inciting, compelling and coercing the discriminatory conduct.

AS A FIFTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
DISCRIMINATION

83. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

84. The Administrative Code of City of New York, Title 8, §8-107 (1) provides that "It shall be an unlawful discriminatory practice: (a) For an employer or an employee of agent thereof, because of the race… of any person, to refuse to hire or employ or to bar or to discharge from

employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

85. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(1)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against the Plaintiff on the basis of his race, together with creating a hostile work environment, retaliation, and wrongful termination.

AS A SIXTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
RETALIATION

86. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

87. The New York City Administrative Code Title 8-107(7) provides that:

> "It shall be unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter…"

88. Defendants engaged in an unlawful discriminatory practice by retaliating, and otherwise discriminating against Plaintiff, including, but not limited to terminating Plaintiff.

AS A SEVENTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
SUPERVISOR LIABILITY

89. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

90. New York City Administrative Code Title 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor:

> An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:
>
> (1) the employee or agent exercised managerial or supervisory responsibility; or
>
> (2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or
>
> (3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

91. Defendants violated the section cited herein as set forth.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

A. Declaring that the Defendants engaged in an unlawful employment practice prohibited by 42 U.S.C. § 1981, the New York State Executive Law, and the New York City Administrative Code, on the basis of Plaintiff's race, together with creating a hostile work environment, retaliation, and wrongful termination;

B. Awarding damages to the Plaintiff, for all lost wages and benefits, past and future, back pay and front pay and to otherwise make Plaintiff whole for any losses suffered as a result of such unlawful employment practice;

C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to reputation;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action;

F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the Defendants' unlawful employment practices.

JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount to be determined at the time of trial plus interest, punitive damages, attorneys' fees, costs, and disbursements of action; and for such other relied as the Court deems just and proper.

Dated: New York, New York
April 24, 2017

By: ____________________

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